

***United States Court of Appeals
for the Second Circuit***



APPELLEE'S BRIEF

75-1266

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P/S

To be argued by
LAWRENCE B. PEDOWITZ

United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 75-1266

UNITED STATES OF AMERICA,

Appellee,

—v.—

JOHN W. WATSON,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR THE UNITED STATES OF AMERICA

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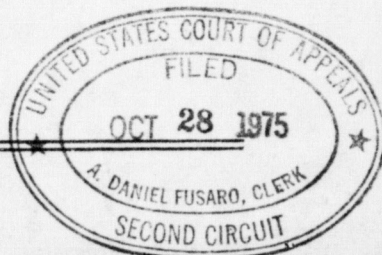


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UNITED STATES OF AMERICA,

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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

John W. Watson appeals from a judgment of conviction entered on July 8, 1975 after a three day trial before the Honorable Lee P. Gagliardi, United States District Judge, and a jury.

Superseding Indictment 75 Cr. 383, filed on April 14, 1975,* charged the defendant Watson in Counts One through Six with having embezzled letters, and the checks contained therein, while employed by the United States Postal Service. Title 18, United States Code, Section 1709. Counts Seven and Eight charged Watson with having forged the names of the payees on the United States Treasury checks contained in the letters described in Counts One and Three, respectively. Title 18, United

* This indictment superseded Indictment 75 Cr. 110.

States Code, Section 495. Count Nine charged Watson with having uttered the United States Treasury check contained in the letter described in Count Two, knowing the endorsement to have been forged. Title 18, United States Code, Section 495.

Trial on Indictment 75 Cr. 383 commenced on May 20, 1975 and terminated on May 22, 1975, when the jury found Watson guilty on Counts One, Three, Seven and Eight. With the consent of the Government, the remaining counts were dismissed before the jury had agreed on a verdict.

On July 8, 1975, Watson was sentenced to concurrent three month terms of imprisonment on Counts One, Three, Seven and Eight, execution of which was suspended, and to a probation term of eighteen months.

Statement of Facts

The Government's Case

Each of the six checks involved in this case was addressed to a location on the route of mail carrier John Watson. The checks were payable to Josephine Rodriguez, Marta Rivera, Candida Guimaroës and Aida Santiago. Rodriguez, Rivera and Guimaroës testified that they never received, endorsed or cashed their checks, and a handwriting expert testified that, in comparing known samples of Watson's handwriting with the endorsements on the back of all but the Guimaroës check, he had concluded that the person who had provided the exemplars also endorsed the payees' names. With respect to the Guimaroës check, on which Watson's handwriting did not appear, a teller at the First National City Bank branch in the Bronx at which Watson had an account

testified that Watson had cashed the check at her teller's window.*

A. The Rodriguez Check

Josephine Rodriguez had lived at 500 Southern Boulevard in the Bronx for approximately seven years when she moved on September 16, 1973 to 202 Rivington Street in lower Manhattan (Tr. 32-33). While Rodriguez had lived in the Bronx, John Watson had been her mail carrier and she had regularly received her Federal social security check by mail (Tr. 34).

One week before Rodriguez moved to 202 Rivington Street, her aunt, Filomena Jiminez, filled out a change of address card and took it to the post office (Tr. 54-55). A change of address for Rodriguez, effective September 17, 1973, was duly entered in Watson's removal book, a book for which he had sole responsibility for making entries. Watson's responsibilities as a mail carrier also included forwarding mail to persons on his route whose change of address was entered in his removal book (Tr. 79; GX 8).

After Rodriguez moved, she did not receive her January 1, 1974 social security check, and accordingly she filed a claim (Tr. 35). Shown this January 1, 1974 check (GX 1), Rodriguez testified that she had not received, endorsed or given anyone permission to endorse the check. The check was, however, properly addressed to her old Bronx apartment (Tr. 37-38).

Any question about what happened to this undelivered check was answered through the testimony of Pamela Pressley, a bank teller, and Frankie E. Franck,

* The jury's verdict of guilty covered the counts charging embezzlement and forgery of the Rodriguez and Rivera checks. The counts charging embezzlement of the Guimaroës and Santiago checks, as well as uttering of the Guimaroës check, were dismissed before verdict.

a Government document analyst. Pressley was head teller at the First National City Bank branch at 833 East 149th Street in the Bronx from January 1974 through May 1974. Watson had an account at this branch, and during Pressley's tenure as head teller, she cashed approximately 25 New York City and Federal checks for Watson without the payees being present. When shown the Rodriguez check, she stated that she had cashed it on January 3, 1974, though there was no way she could be certain whether this was one of the checks she had cashed for Watson (Tr. 90-96). Franck, whose qualifications as an expert were conceded by the defense, testified that he had concluded that known samples of Watson's handwriting and the Rodriguez endorsement had been written by the same person (Tr. 157-66).

On March 20, 1975, Watson came to Rodriguez' apartment on Rivington Street and spoke to Rodriguez' aunt, Filomena Jimenez (Tr. 39, 50, 58-59). Watson told Jimenez that he was in trouble because a girl who worked in the bank had altered some checks and because he had put his initials on the checks. Watson asked for Jimenez' help (Tr. 58-59).

B. The Rivera Check

At the time of trial, Marta Rivera had lived at 551 Wales Avenue for seven years. In 1974, she regularly received Federal social security checks by mail. When she did not receive her May 1, 1974 check, she filed a claim with the social security office (Tr. 63-64). Shown her May 1, 1974 check (GX 3), she testified that she had never received, endorsed, or given anyone permission to endorse the check. She further testified that the address on the check, 531 Wales Avenue was incorrect, since she lived at 551 Wales Avenue. Her mailman, she testified, was not John Watson and never had been (Tr. 66-67).

The address to which the check was addressed—531 Wales Avenue—, while within the range of addresses on Watson's route, was a non-existent address (Tr. 76). In the normal course, mail sent to a non-existent address was, pursuant to Postal Service regulation, to be returned to the sender by the mail carrier to whose route the mail was addressed (Tr. 79-80). Joseph Esposito, Rivera's mailman, testified that in 1974 Rivera's social security checks were incorrectly addressed and that, on a number of occasions, John Watson had given him checks for delivery to Rivera (Tr. 83-85).

Pamela Pressley testified that the Rivera check had been cashed at a First National City Bank branch, and Franck, the document analyst, opined that the same person who had written the previously identified exemplars of Watson's handwriting had also endorsed the Rivera check (Tr. 99, 168-74).

C. The Guimaroës Check

Candida Guimaroës had lived at 823 147th Street in the Bronx for five years. Her mailman in April 1974 was Watson. When she did not receive her April 3, 1974 social security check, she notified the social security office. Shown a copy of this check (GX 2), she stated that she had never received it, endorsed it, or given anyone permission to endorse it (Tr. 17-21). The check was, however, properly addressed (Tr. 20).

Pamela Pressley testified that she had cashed the Guimaroës check for John Watson on April 3, 1974. She had written his name on the check as second endorser after he left the bank, she testified, because she was concerned that the check was for a large amount and she did not want to be held responsible if the check did not clear (Tr. 96-98).

D. The Santiago Checks

Three Aida Santiago City welfare checks dated December 31, 1973, March 13, 1974 and April 15, 1974 were each mailed to 528 Wales Avenue in the Bronx, an address on Watson's route (Tr. 76, 99-102; GX 4-6). The checks were cashed on January 3, 1974, March 14, 1974 and April 15, 1974, respectively, at the First National City Bank branch at which Watson had an account. Pressley testified that each of these checks had been brought to the bank and cashed by John Watson (Tr. 99-103).*

Despite Watson's assertions in pre-arraignment statements that he had never endorsed or cashed these checks, Franck testified that Watson's handwriting exemplars matched the Santiago endorsements on the back of the checks (Tr. 174-80).**

The Defense Case

John Watson took the stand in his own defense. On direct examination, he testified that he had worked on the same mail route in the Bronx from 1945 to December 1974. He said he knew Josephine Rodriguez, Candida Guimaroës and Aida Santiago, but said he did not know Marta Rivera. He further testified that two persons named Josephine Rodriguez had lived at 500 Southern Boulevard in 1974. He categorically denied cashing the Guimaroës check or endorsing the Rodriguez, Rivera, or Santiago checks. He admitted that he did have an account at the First National City Bank (Tr. 208-16).

* Pressley stated that she knew Watson had cashed these welfare checks, because the checks did not, as required, have the welfare identification number of the payee on the back of the check and Watson was the only person for whom she would cash welfare checks without requiring the identification number (Tr. 100-03).

** Despite substantial efforts by the Government (Tr. 144-45), Aida Santiago could not be located and was therefore not a witness at trial.

On cross-examination, Watson claimed that, when Josephine Rodriguez moved, she had asked him to hold on to her checks because she was not certain where she would finally settle (Tr. 222). Despite Rodriguez' testimony that, since her move she had not been back to her old neighborhood (Tr. 38), Watson asserted that Rodriguez had returned on three or four occasions to pick up her checks (Tr. 222-26). However, when Watson confirmed that Rodriguez had moved in September 1973, received checks twice monthly, and had been back only three or four times to pick up her check, he was unable to explain how this could account for her not having received in the mail her January 1974 check some four months after she had moved. Watson then switched fields and claimed that, because Rodriguez' checks were welfare checks, he could not lawfully forward them to her. However, once Watson acknowledged that the Rodriguez check was a Federal, not City check, he was forced to admit that he could indeed lawfully have forwarded it to her (Tr. 230-32).

With respect to the Rivera check, Watson admitted that the address to which the check was sent was within the range of numbers on his route but was a non-existent address. He further acknowledged knowing that Rivera was having checks sent to this incorrect address (Tr. 235-38).

Watson also admitted that he had an account at the 149th Street Branch of the First National City Bank and knew Pamela Pressley. With respect to his finances, Watson stated that in 1974 he was supporting a wife, two daughters, a granddaughter and his mother on his \$13,500 a year gross income. He stated he paid rent on an apartment and had a \$150 a month mortgage on a home in New Jersey for which extensive and costly repairs had been required. While, in 1972, Watson's bankbook indicated that he had some \$7,000 in savings, he had substantially depleted the account by 1974 and in

early 1974 had anticipated retiring on a pension in mid-1974* (Tr. 254-56).

ARGUMENT

POINT I

The evidence was more than sufficient to support the jury's verdict.

Watson's sole claim on appeal is that the proof at trial was insufficient to support the jury's verdict. Watson seeks, in the claims he raises, *de novo* review by this Court of factual issues which were conclusively decided against him below. His contentions are entirely without merit.

Watson argues first that the handwriting expert's testimony must be rejected, because (i) the expert admitted that Watson's handwriting showed more variation than normal; (ii) the endorsement on the back of the Rivera check was smudged; and (iii) the expert was not given a sample of Watson's capital "M" formation with which to compare the Marta Rivera endorsement.** The handwriting expert did, to be sure, testify that Watson's handwriting showed "more [variation] than average" (Tr. 190). However, the expert also testified that the variation was detected in the known samples of Watson's handwriting, and he therefore explained that the variation in no way led him to conclude that Watson had not forged the endorsements on the backs of the Rodriguez and Rivera checks (Tr. 196-97). No less persuasive is

* The pension would net Watson about \$600 a year less than his post office salary.

** Although Marta Rivera was the payee on this check, the forged endorsement actually read "Marie Rivera" (Tr. 67).

the argument that the handwriting on the back of Rivera's check was smudged. There was testimony that the Rivera endorsement was smudged during a fingerprint analysis conducted on the checks (Tr. 186-87). However, before this fingerprint analysis had been conducted, the handwriting expert took the precaution of photographing the endorsement on the Rivera check (Tr. 185). The expert testified that there was no obstacle in using this photograph to conduct a full analysis and comparison of the handwriting on the back of the check (Tr. 188). Indeed, the expert testified that the photographic process enhanced the analysis, because a bank stamp which had covered the Rivera endorsement was filtered out by the photograph (Tr. 188). Of even less merit is the claim that the expert was not given exemplars of Watson's capital "M" formation with which to compare the "M" in the Rivera endorsement (Appellant's Brief at 10). The simple answer to this contention is that Watson is mistaken; the expert was indeed given capital "M" exemplars of Watson's handwriting (See Tr. 170-71; 189; compare GX 3 with GX 10 and 11).*

The handwriting expert's qualification which included over twelve years work as a qualified document analyst were readily conceded by the defense (Tr. 157). His conclusions, moreover, were fully explained and supported by the use of charts comparing known samples of Watson's handwriting with the forged endorsements (GX 1A, 3A, 4A). The jury was properly instructed by the trial judge that:

"If you should decide that the opinion of an expert witness is not based upon sufficient educa-

* Watson's claim here may be that the expert could not point to a capital "M" among the exemplars which contained the sort of flourish which occurred in the "M" in the Rivera endorsement (See Tr. 189-90). The expert testified, however, that the flourish was well within the range of Watson's handwriting and was probably an accidental formation (Tr. 171).

tion or experience, or if you should conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely" (Tr. 329).

Watson has offered no cogent reason why the jury, which apparently decided to rely on the expert's testimony, should be second-guessed by this Court. *Cf. United States v. Green*, slip op. 5891, 5903-04 (2d Cir., August 29, 1975).*

Watson also takes issue with the Government's proof that he had embezzled and forged the endorsements on the Rodriguez and Rivera checks. With respect to the Rodriguez check, he argues that the Government did not controvert his claims (i) that two Josephine Rodriguezes lived at 500 Southern Boulevard, and therefore the check might have been inadvertently delivered to the wrong Rodriguez; and (ii) that Josephine Rodriguez continued to pick up her checks after she moved from the Bronx. First, the assertion that the Rodriguez check might have been inadvertently delivered to the wrong Josephine Rodriguez is undermined by the proof at trial that Watson's handwriting is on the back of the check and by the fact that the check was correctly addressed to apartment 4F, the apartment in which the true payee had lived, not apartment 3B, the apartment in which Watson claimed the second Josephine Rodriguez resided (See GX 1; Tr. 209). This claim is also undercut by the fact that in almost the same breath that Watson argued the check could have been misdelivered he also claimed that he held this

* The seriousness with which this attack on the handwriting expert's testimony is launched must be seriously questioned, since, while the defense hired, under the Criminal Justice Act, its own expert to conduct an independent comparison of the exemplars and endorsements, the expert was not called upon to challenge the conclusions of the Government's expert.

check for the true Josephine Rodriguez until she came to the Bronx to pick it up. This alternative claim is itself rebutted by Rodriguez' own testimony that she had never received the check and had not been back to her old neighborhood since she had moved, as well as by the handwriting expert's testimony that John Watson, not Josephine Rodriguez (Tr. 166-67), signed the check.

With respect to the Rivera check, Watson claims that, since there was testimony that Rivera's checks were regularly being sent to 531 Wales Avenue instead of 551 Wales Avenue, it is "conceivable" that someone, other than Watson, could have obtained the Rivera check and forged the endorsement. This proposition becomes untenable when it is recognized that Watson's handwriting is on the check and that 531 Wales Avenue, the incorrect address, was on Watson's route and he therefore would in the normal course come into contact with the check.

Although Watson has nominally acknowledged this Court's obligation to review the evidence in the light most favorable to the Government (Appellant's Brief at 9), he has utterly failed in constructing his appellate arguments to give "full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact." *United States v. Harris*, 435 F.2d 74, 88 (D.C. Cir. 1970), *cert. denied*, 402 U.S. 986 (1971); *Curley v. United States*, 160 F.2d 229, 232 (D.C. Cir.), *cert. denied*, 331 U.S. 837 (1947).

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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AFFIDAVIT OF MAILING

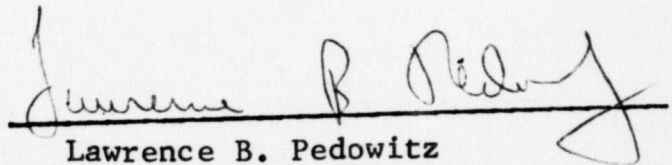
STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

Lawrence B/ Pedowitz, being duly sworn, deposes and says that he is employed in the office of the United States Attorney for the Southern District of New York.

That on the 28th day of October, 1975 he served 2 copies of the within brief by placing the same in a properly postpaid franked envelope addressed:

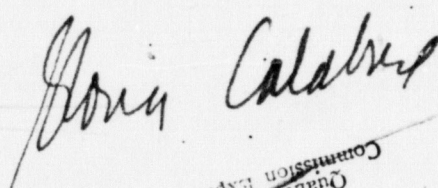
Bertram Zweibon, Esq.
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New York, New York 10038

And deponent further says that he sealed the said envelope and ^{to be placed} placed the same in the mail drop for mailing at the United States Courthouse, Foley Square, Borough of Manhattan, City of New York.


Lawrence B. Pedowitz

Sworn to before me this

28th day of October, 1975



GLORIA CALABRESE
Notary Public, State of New York
No. 24-0535340
Qualified in Kings County
Commission Expires March 30, 1977

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